

2023 LiveLaw (SC) 474

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
K.M. JOSEPH; J., ARAVIND KUMAR; J.**

May 18, 2023

CRIMINAL APPEAL NO. 1578 OF 2023 (Arising out of SLP (Crl.) No. 3518 of 2023)

SEBIL ELANJIMPALLY *versus* THE STATE OF ODISHA

Bail - Accused cannot be denied bail on the sole ground that the co-accused has not surrendered.

(Arising out of impugned final judgment and order dated 20-01-2023 in BLAPL No. 6803/2022 passed by the High Court of Orissa at Cuttack)

For Appellant(s) Mr. Hitendra Nath Rath, AOR Dr. J. Prasangi, Adv. Mr. R. Sreeramulu, Adv. Mr. Rajiv Kapoor, Adv. Mr. Vikas Sinha, Adv.

For Respondent(s) Ms. Samapika Biswal, AOR

J U D G M E N T

Leave granted.

The impugned order is one by which the application for bail filed by the appellant has been rejected.

The appellant has been charged for alleged commission of offences under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The appellant has been in custody for two years and 11 months. The impugned order is the order passed in the second bail application. The earlier bail application came to be rejected on 07.07.2022. It is, in fact, pointed out by the learned counsel for the State that another attempt at securing bail from the High Court has failed.

As far as the impugned order goes, we notice that the following is the reasoning:

“Taking into account that the co-accused, who has since been released on bail has not surrendered, this Court is constrained not to entertain the bail application of the petitioner.”

Thereafter the Court proceeded to note the case of the appellant that his father has undergone surgery and the Court proceeded to direct expeditious disposal of the case.

We have heard the learned counsel for the appellant and also the learned counsel for the State as noted.

The impugned order shows that what has weighed with the Court is the fact that the co-accused who was released on bail has not surrendered. It is this factor alone which we can discern to be the reason to not entertain the bail application.

After hearing learned counsel for the parties, we are of the view that the fact that the co-accused who was released on bail has not surrendered cannot be a germane factor to decline bail to the co-accused, namely, the appellant.

In such circumstances, we are of the view that the matter must have reconsideration again at the hands of the High Court. The appeal is allowed. The impugned order is set aside. The High Court will take up BLAPL No. 6803/2022 and pass orders on the same in view of the fact that it is a case where the charges have been framed and 19 prosecution witnesses are proposed to be examined by the State.

We request the High Court to take up the application and dispose of the same at the earliest and if possible, preferably within a period of two months from the date of production of the copy of the order.